IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

68-0157 (9-06) - 3091078 - EI

PATRICIA M RUSSO
Claimant

HARVEST MANAGEMENT SERVICES
Employer

APPEAL NO. 09A-UI-01760-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/28/08 R: 03
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 26, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 25, 2009. Claimant participated with Fred Russo. Employer did not participate. Claimant's Exhibit A was received.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a manager and was employed from June 9, 2008 until December 18, 2008, when she quit. On December 17 David Leonard, the regional manager, gave claimant and her husband Fred Russo three options: 1. remain as managers and increase the census by 14 the first of the year (in two weeks); 2. Remain as co-managers and increase census by 14 within two weeks; or 3. Move to Walden Place in Iowa City as co-managers and help the managers there increase the census by the end of the year. The addition of 14 new residents by the first of the year was unrealistic, as history showed the addition of three new residents in six months; and when claimant and her husband took responsibility for the facility, they had to take time to bring 33 apartments up to rent-ready status. The census was down at Beaverdale when they got there and telemarketers were not able to help increase the census either. Although employer did not threaten termination, it was implied when claimant asked what Leonard would do if they quit and he said he had someone else in place to take over and did not require notice. Leonard did not allow them even 24 hours to consider the options but required an answer before he left the premises that day. After they quit, the replacement was accomplished within two days. Since the separation, the new resident standard has been reduced to 6 for the entire year rather than 14 within two weeks. Although they never received training to be managers, employer gave them bonuses and told them they were doing a "great job."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did voluntarily leave the employment with good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

In general, a substantial pay reduction of 25 to 35 percent or a similar reduction of working hours creates good cause attributable to the employer for a resignation. *Dehmel v. EAB*, 433 N.W.2d 700 (Iowa 1988). A claimant is not generally required to give notice of his intention to quit due to an intolerable, detrimental or unsafe working environment if employer had or should have had reasonable knowledge of the condition. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Inasmuch as the claimant would be required to perform an impossible task employer essentially set claimant up to quit or face discharge. Since employer had given claimant accolades about the earlier work performance, employer has not established misconduct as a reason for the effective demotion and addition of unreasonable duties, the change of the original terms of hire is considered substantial. Thus the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The January 26, 2009, reference 01, decision is reversed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw